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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/556,456

11/10/2005

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EXAMINER

ZACHARIA, RAMSEY E

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/556,456	Applicant(s) KITAHARA ET AL.	
	Examiner Ramsey Zacharia	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102 / 103

2. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fukushi et al. (US 2003/0198770).

Fukushi et al. teach an article that may be used as a hose for conveying fuels (paragraph 0001). The article comprises a layer of a perhalogenated polymer (paragraph 0004). Additional layers comprising polymers, such as polyamides and polyolefins, may be used (paragraph 0037-0041). The perhalogenated polymer may comprise at least 95% of interpolymerized units, such as tetrafluoroethylene and chlorotrifluoroethylene, and further include other perfluorinated monomers (paragraph 0015). A polymer comprising at least 95% TFE and CTFE would be expected to have a fuel permeation coefficient that meets the limitations of claims 1-3 since such a polymer reads on the material described in the instant specification (see page 10, lines 5-13). Moreover, because the thickness of the perhalogenated layer (0.5 mm in the Examples) is within the range cited in the instant specification (see page 23, lines 23-27), the resulting fuel hose would be expected to have a fuel permeation rate that meets the limitation of claims 1-3.

While Fukushi et al. do not illustrate a specific embodiment wherein a copolymer of CTFE, TFE, and a comonomer is used as the perhalogenated polymer. However, Fukushi et al.

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do teach that the perhalogenated polymer may comprise 95% of interpolymerized units such as TFE and CTFE in addition to other perfluorinated monomers (see paragraph 0015).

In the event that one skilled in the art would not readily envisage a perhalogenated polymer comprising 95% of a combination of CTFE and TFE in addition to other perfluorinated monomers, it would have been obvious to one skilled in the art to use both CTFE and TFE in the perhalogenated polymer since it has been held that it is *prima facie* obvious to combine two compositions (e.g. monomers of CTFE and monomers of TFE) each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition (e.g. monomers of CTFE and TFE) to be used for the very same purpose. See MPEP 2144.06.

Response to Arguments

3. Applicant's arguments filed 24 April 2008 have been fully considered but they are not persuasive.

The applicants argue that Examples 6 and 7 in the instant specification demonstrate an unexpected effect of increased bonding strength after fuel storage in addition to a decreased fuel permeation rate.

This is not persuasive for the following reasons. First, it is noted that unexpected results cannot be relied upon to overcome a rejection based on anticipation. Moreover, showing is insufficient to overcome the rejection based on obviousness for at least the reason that the showing is not commensurate in scope with the claims. Claim 1 is directed to a laminate having a layer comprising a copolymer of chlorotrifluoroethylene with tetrafluoroethylene and/or ethylene and a layer comprising a fluorine-free organic material. However, Examples 6 and 7

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use only one particular fluoropolymer (i.e. CTFE/TFE/PPVE copolymer) and one particular fluorine-free organic material (polyamide 12).

The applicants argue that Fukushi et al. does not disclose the use of a chlorotrifluoroethylene copolymer for improving liquid chemical impermeability and bonding strength.

However, this is not persuasive since Fukushi et al. do explicitly teach the use of polymers containing chlorotrifluoroethylene repeat units and it has been held that it is not necessary that the prior art suggest the claimed invention for the purpose of achieving the same advantage or result discovered by applicant. See MPEP 2144 IV.

The applicants further argue that a partially-fluorinated polymer of VDF is required by the article of Fukushi et al.

This is not persuasive because the claims have not been written with closed language. Therefore, the laminate as claimed is open to the inclusion of other components including a partially-fluorinated layer comprising a VDF polymer.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Zacharia whose telephone number is (571) 272-1518. The examiner can normally be reached on Monday through Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached at (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Ramsey Zacharia/

Primary Examiner, Art Unit 1794